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AS

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/431,888 11/02/99 WISE

L 1064/44803

EXAMINER

HM22/0818

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WASHINGTON DC 20005

ANDRES, J

ART UNIT

PAPER NUMBER

1646

DATE MAILED:

08/18/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/431,888

Applicant(s)

WISE ET AL.

Examiner

Janet L Andres

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claims 1-52 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) ____.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-7, drawn to methods involving stimulating VEGFR2, classified in class 514, subclass 2.
 - II. Claims 8-13, drawn to methods involving antagonists to VEGFR2, classified in class 514, subclass 2.
 - III. Claims 14-20, 43-48, and 51, drawn to polynucleotides and methods of expression, classified in class 435, subclasses 69.1, 320.1, and 325.
 - IV. Claims 22-28, 41, 42, 49, and 50, drawn to polypeptides, classified in class 530, subclass 350.
 - V. Claims 21 and 29-37, drawn to antibodies and kits, classified in class 530, subclasses 388.1 and 389.1, and 435, subclass 810.
 - VI. Claims 29 and 38, drawn to antisense molecules, classified in class 536, subclass 23.5.
 - VII. Claims 29, 39, and 40, drawn to polypeptide antagonists, classified in class 530, subclass 300.
 - VIII. Claim 52, drawn to a method of screening, classified in class 435, subclass 7.1.

Claim 29 appears in more than one group because it encompasses more than one invention.

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The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are drawn to methods with opposite goals, opposite requirements, and opposite effects.

Inventions I and III are unrelated. The polynucleotides of Invention III can not be used in the methods of Invention I.

Inventions I and IV are distinct because the polypeptides of Invention IV can be used for other purposes, such as the generation of antibodies, and the methods of Invention I can use other molecules, such as polypeptide agonists.

Invention I is not related to Inventions V, VI, or VII. The antagonists of Inventions V, VI, and VII can not be used in the methods of Invention I.

Invention I is not related to Invention VIII. The methods are distinct, with different goals and different concerns.

Invention II is not related to Invention III. The polynucleotides of Invention III can not be used in the methods of Invention II.

Invention II is not related to Invention IV. The polypeptide agonists of Invention IV can not be used in the methods of Invention II.

Invention II is related to Invention V as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially

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different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the process can be practiced with materially different products, such as antisense molecules.

Invention II is related to Invention VI as product and process of use. The inventions are distinct because the process of Invention II can be practiced with materially different products, such as antibodies.

Invention II is related to Invention VII as product and process of use. The inventions are distinct because the process of Invention II can be practiced with materially different products, such as antibodies.

Invention II is not related to Invention VIII. The methods are distinct, with different goals and different concerns.

Inventions III and IV are distinct because they are physically and functionally distinct chemical entities. The DNA molecules of Invention III may be used in hybridization assays for which the polypeptides of Invention IV may not. Additionally, the polypeptide products of Invention IV can be made by a process that does not use the DNA molecules of Invention III, such affinity purification using an antibody.

Inventions III and V are unrelated. The polynucleotides of Invention III can not be used to produce the antibodies of Invention V, and the antibodies of Invention V can not be used to detect the polynucleotides of Invention III.

Inventions III and VI are distinct because they have different functions and are used in different methods drawn to different purposes.

Inventions III and VII are distinct because they are physically and functionally distinct chemical entities. The DNA molecules of Invention III may be used in hybridization assays for which the polypeptides of Invention VII may not. Additionally, the polypeptide products of Invention VII, can be made by other processes, such as peptide synthesis.

Inventions III and VIII are unrelated. The polynucleotides of Invention III can not be used in the methods of Invention VIII.

Inventions IV and V are distinct because they are physically and functionally distinct chemical entities. While the polypeptides of IV may be used to generate the antibodies of Invention V, and the antibodies of Invention V may be used to detect the polypeptides of Invention IV, the polypeptides of Invention IV may be used for other purposes, such as therapy, and other methods, such as functional assays, may be used to detect the presence of the polypeptides.

Inventions IV and VI are distinct because they are physically and functionally distinct chemical entities and are not capable of use together.

Inventions IV and VII are distinct because they have different and opposite functions and are used in different methods.

Inventions IV and VIII are distinct because the polypeptides of Invention IV have other uses, such as treatment and the generation of antibodies.

Invention V and VI are distinct because they are physically and functionally distinct chemical entities that function in different ways.

Invention V and Invention VII are distinct because they are physically and functionally distinct chemical entities and the antibodies of Invention V can be used for purposes for which the polypeptides of Invention VII can not be used, such as purification and detection.

Invention V is distinct from Invention VIII because the screens of Invention VIII can be used to identify other classes of molecules, such as peptides or small molecule inhibitors.

Invention VI is distinct from Invention VII because they are chemically and physically distinct entities and the antisense molecules of Invention VI may be used for purposes for which the peptides of Invention VII may not, such as nucleic acid detection.

Invention VI is distinct from Invention VIII because the screens of Invention VIII can be used to identify other classes of molecules, such as peptides or small molecule inhibitors.

Invention VII is distinct from Invention VIII because the screens of Invention VIII can be used to identify other classes of molecules, such as small molecule inhibitors.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, and because each requires a different search, restriction for examination purposes as indicated is proper.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet Andres, Ph.D., whose telephone number is (703) 305-0557. The examiner can normally be reached on Monday through Friday from 8:00 am to 5:30 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler, Ph.D., can be reached at (703) 308-6564. The fax phone number for this Group is (703) 305-3014 or (703) 308-4242.

Communications via internet email regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [yvonne.eyler@uspto.gov].

All Internet email communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark Office on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Janet L. Andres, Ph.D.
August 17, 2000


YVONNE EYLER, PH.D.
PRIMARY EXAMINER